



Tax Sale Agreements

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Introduction

- On March 14, 2012, Governor Mitch Daniels signed House Enrolled Act 1090 ("HEA 1090"). Effective March 14, 2012, section 1 of HEA 1090 addresses payment of delinquent property taxes and procedures in conducting tax sales, affecting IC 6-1.1-24, IC 6-1.1-25, and IC 6-1.1-37.



AGREEMENT REGARDING PAYMENT OF DELINQUENT TAXES (IC 6-1.1-24-1.2)

- Among other things, HEA 1090 amends IC 6-1.1-24-1.2(c). Under the prior law, the county auditor in a county having a population of more than 400,000 but less than 700,000 could, before a tax sale, remove a tract or an item of real property from the certified list of properties subject to a tax sale if the county treasurer and taxpayer make arrangements for payment of delinquent taxes. HEA 1090 removes the language concerning county population.



Agreement Regarding Payment of Delinquent Taxes IC 6-1.1-24-1.2

- Thus, under the amended IC 6-1.1-24-1.2(c), an auditor of a county, regardless of the county's population, may remove a tract or an item of real property from the list certified under IC 6-1.1-24-1 before the tax sale if the county treasurer and the taxpayer agree to a mutually satisfactory arrangement for the payment of delinquent taxes.



Date Full Payment Is Due and Effect of Noncompliance

- Formerly, the county treasurer was allowed to remove a tract or item from the delinquent list, IC 6-1.1-24-1.2(d) now states that the county auditor may remove the tract or item from the list if the agreement between county treasurer and taxpayer:
 - 1) is in writing;
 - 2) is signed by the taxpayer; and
 - 3) requires the taxpayer to pay the delinquent taxes in full not later than the last business day before July 1 of the year after the date the agreement is signed.



Date Full Payment is Due and Effect of Noncompliance

- Note that IC 6-1.1-24-1.2(d)(3) changes the date full payment of delinquent taxes is due. Rather than within one year of the date the agreement is signed, now the taxpayer must pay in full not later than the last business day before July 1 of the year after the agreement is signed.



Date Full Payment is Due and Effect of Noncompliance

- Furthermore, IC 6-1.1-24-1.2(e) now provides that if the taxpayer fails to make a payment under the agreement with the county treasurer, the agreement is void. In which case, the county auditor must immediately place the tract or item of real property on the list of real property eligible for sale at a tax sale.



Limitation on Taxpayer to Enter into Subsequent Agreements

- IC 6-1.1-24-1.2(f) has also been amended. The county auditor is no longer required to notify the mayors of cities with certain populations of the arrangement. Rather, IC 6-1.1-24-1.2(f) now states that if a taxpayer fails to make a payment under the agreement with the county treasurer, and the county auditor removes the tract or item the taxes of which were due under the agreement, the taxpayer may not enter into another arrangement with respect to that same tract or item after the due date of the payment and before the date that succeeds by five years the date on which the original arrangement would have expired if the arrangement had not become void.



Limitation on Taxpayer to Enter into Subsequent Agreements

- *Example: In 2013, Taxpayer enters into an agreement with the county treasurer to pay all delinquent taxes on property A in full not later than the last business day before June 30, 2014 (“the due date”). Under this arrangement, Taxpayer must pay in monthly installments. The county auditor removes property A from the list of properties subject to a tax sale. Taxpayer fails to pay the first monthly installment due on June 1, 2013. Thereafter, the county auditor puts property A back on the list. Taxpayer may not enter into another arrangement to pay delinquent taxes on property A from the day after the day the first installment was due until the day after the five year anniversary of the due date, in this case June 30, 2019.*



WAIVER OF INTEREST AND PENALTIES (IC 6-1.1-37-10.1)

- HEA 1090 adds new section IC 6-1.1-37-10.1. Before July 1, 2012, the fiscal body of a county could have adopted an ordinance to have IC 6-1.1-37-10.1 apply throughout the county. If the fiscal body of a county adopted an ordinance under IC 6-1.1-37-10.1(a), the ordinance applies after June 30, 2012, and until July 1, 2013, and the fiscal body must deliver a copy of the ordinance to the county treasurer and the county auditor.



WAIVER OF INTEREST AND PENALTIES (IC 6-1.1-37-10.1)

- Under IC 6-1.1-37-10.1(b), the county treasurer of a county to which IC 6-1.1-37-10.1 applies shall waive all interest and penalties added before January 1, 2012, to a delinquent property tax installment or special assessment on a tract or an item of real property if:

all of the delinquent taxes and special assessments on the tract or item of real property were first due and payable before January 1, 2012 and the taxpayer has paid, before July 1, 2013, all of the delinquent taxes and special assessments described in IC 6-1.1-37-10.1(a)(1) and all of the taxes and special assessments that are first due and payable on the tract or item of real property after December 31, 2011, and before July 1, 2013 (and any interest and penalties on these taxes and special assessments).



Waiver of Interest and Penalties (IC 6-1.1-37-10.1)

- The county treasurer of a county to which IC 6-1.1-37-10.1 applies shall waive interest and penalties as provided in IC 6-1.1-37-10.1(b) if the conditions of IC 6-1.1-37-10.1(b) are satisfied, notwithstanding any payment arrangement entered into by the county treasurer and the taxpayer under IC 6-1.1-24-1.2 or under any other law.



Declaration of Waiver of Penalties (IC 6-1.1-24-2(a)(15) & IC 6-1.1-24-4(a))

- HEA 1090 adds IC 6-1.1-24-2(a)(15). The county auditor must include in the notice of the delinquency list under IC 6-1.1-24-1, with respect to a tract or an item of real property that is subject to sale under IC 6-1.1-24 after June 30, 2012, and before July 1, 2013, a statement declaring whether an ordinance adopted under IC 6-1.1-37-10.1 is in effect in the county and, if applicable, an explanation of the circumstances in which penalties on the delinquent taxes and special assessments will be waived.
- HEA 1090 also adds this language within IC 6-1.1-24-4(a). The remainder of IC 6-1.1-24-4(a) is unaffected.



AUTHORITY OF COUNTY TREASURER TO HOLD TAX SALE, AMENDED (IC 6-1.1-24-5)

- HEA 1090 amends IC 6-1.1-24-5(e) such that the county treasurer must sell the tract or item of real property, subject to the right of redemption, to the highest bidder at public auction whose bid is at least the minimum bid specified in IC 6-1.1-24-5(f) or IC 6-1.1-24-5(g), as applicable.



Limitation on Amount for which the Real Property Can Be Sold

- IC 6-1.1-24-5(f) was amended to apply in all cases except when a county adopted an ordinance under IC 6-1.1-24-15(a). When IC 6-1.1-24-5(f) applies, a tract or an item of real property may not be sold for an amount which is less than the sum of:
 - 1) the delinquent taxes and special assessments on each tract or item of real property;
 - 2) the taxes and special assessments on each tract or item of real property that are due and payable in the year of the sale, regardless of whether the taxes and special assessments are delinquent;
 - 3) all penalties which are due on the delinquencies;
 - 4) the amount prescribed by IC 6-1.1-24-2(a)(3)(D) reflecting the costs incurred by the county due to the sale;
 - 5) any unpaid costs which are due under IC 6-1.1-24-2(b) from a prior tax sale; and
 - 6) other reasonable expenses of collection, including title search expenses, uniform commercial code expenses, and reasonable attorney's fees incurred by the date of the sale.
- In addition, the amount of penalties due on the delinquencies under IC 6-1.1-24-2(a)(3) must be adjusted in accordance with IC 6-1.1-37-10.1, as applicable.



New Limitation on Amount for which Real Property Can Be Sold under an Ordinance Pursuant to IC 6-1.1-24-15

- New subsection IC 6-1.1-24-5(g) applies when a county adopted an ordinance permitting a minimum bid as prescribed in IC 6-1.1-24-15(a). If an ordinance adopted under IC 6-1.1-24-15(a) is in effect in the county in which a tract or an item of real property is located, the tract or item of real property may not be sold for an amount that is less than the lesser of:
 - 1) the amount determined under IC 6-1.1-24-5(f); or
 - 2) 75% of the gross assessed value of the tract or item of real property, as determined on the most recent assessment date.



ORDINANCES ALLOWING BIDS BELOW GROSS ASSESSED VALUE OF PROPERTY (IC 6-1.1-24-15)

- Under IC 6-1.1-24-15(a), the fiscal body of a county may adopt an ordinance authorizing the county treasurer to accept a bid on a tract or an item of real property offered for sale under IC 6-1.1-24 that is greater than or equal to the lesser of:
 - 1) the amount determined under IC 6-1.1-24-5(f) for the tract or item of real property; or
 - 2) 75% of the gross assessed value of the tract or item of real property, as determined on the most recent assessment date.



Notice of Ordinance of Adoption or Repeal to County Treasurer and Auditor (IC 6-1.1-24-15(b))

- If the fiscal body of a county adopts an ordinance under IC 6-1.1-24-15(a) or repeals an ordinance adopted under IC 6-1.1-24-5(a), the fiscal body must promptly deliver a copy of the ordinance to the county treasurer and the county auditor.



ALLOCATION OF PROCEEDS OF TAX SALE (IC 6-1.1-24-7)

Allocation of proceeds in general, IC 6-1.1-24-7(a)

- When real property is sold under IC 6-1.1-24, the purchaser at the sale shall immediately pay the amount of the bid to the county treasurer. The county treasurer shall apply the payment in the following manner:
 - 1) first, to the taxes, special assessments, penalties, and costs described in IC 6-1.1-24-5(f);
 - 2) second, to other delinquent property taxes in the manner provided in IC 6-1.1-23-5(b); and
 - 3) third, to a separate “tax sale surplus fund.”





County Allowing Sale below Gross Assessed Value May Get Only part of Proceeds (IC 6-1.1-24-7(b))

- HEA 1090 provides that, under certain conditions, a taxing unit where the real property sold resides receives a proportion of the proceeds of the sale. According to IC 6-1.1-24-7(b), if:
 - 1) a tract or an item of real property sold under IC 6-1.1-24-5 is located in a county in which an ordinance adopted under IC 6-1.1-24-15 is in effect in the county; and
 - 2) the sales price of the tract or item of real property is less than the amount specified in IC 6-1.1-24-5(f);

in addition to the application of any payment received under IC 6-1.1-24-7(a)(1), each taxing unit having an interest in the taxes on the tract shall be charged with the part of the tax due to the taxing unit equal to an amount that bears the same relationship to the tax due to the taxing unit as the amount determined under IC 6-1.1-24-5(f) minus the selling price bears to the amount determined under IC 6-1.1-24-5(f).

- Hence, the taxing unit will receive a portion of the tax sale proceeds proportional to what it would have received had the county not adopted an ordinance allowing for a minimum bid that is either:
 - 1) the amount needed to satisfy all taxes, penalties, interests, and expenses; or
 - 2) seventy-five percent (75%) of the gross assessed value of the property, as determined on the most recent assessment date.



County Allowing Sale below Gross Assessed Value May Get Part of Proceeds (IC 6-1.1-24-7(b)) CONTINUED

- The following example should make this clear.
- *Example: Property A is being sold at a tax sale. Its gross assessed value is \$1,000. The county where A is located adopted an ordinance allowing for a minimum sale price no less than seventy-five percent (75%) of its assessed value. The sale price for A is \$750. The total amount determined under IC 6-1.1-24-5(f) sums up to \$1000. The amount of revenue that all local taxing units will receive from the sale of A is reduced proportionally. The proportion is determined as follows:*
- *Formula: (Amount determined under IC 6-1.1-24-5(f) – Minimum tax sale revenue under county ordinance) ÷ Minimum tax sale revenue prior to county ordinance = Percent decrease*
- *Amount determined under IC 6-1.1-24-5(f): \$1000*
- *Minimum tax sale revenue prior to county ordinance: \$1000*
- *Minimum tax sale revenue under county ordinance: \$750*
- *Percent decrease: $(1000 - 750) \div 1000 = 25\%$*
- *Hence, each local taxing unit will receive revenue from the sale of A reduced by 25% of what each was owed according to IC 6-1.1-24-5(f) prior to the adoption of the county ordinance.*



REDEMPTION OF REAL PROPERTY (IC 6-1.1-25-2 & IC 6-1.1-25-4)

- HEA 1090 adds new subsection IC 6-1.1-25-2(f). The total amount required for redemption includes, in addition to the amounts required under IC 6-1.1-25-2(b) and (e), all taxes, special assessments, interest, penalties, and fees on the property that accrued after the sale.



Procedures for Redemption of Real Property after Tax Sale (IC 6-1.1-25-4)

- Finally, HEA 1090 amends or adds the following subsections to IC 6-1.1-25-4:
- IC 6-1.1-25-4(b) is now subject to IC 6-1.1-25-4(l) and IC 6-1.1-24-9(d), but still provides that the period for redemption of real property:
 - 1) on which the county executive acquires a lien under IC 6-1.1-24-6; and
 - 2) for which the certificate of sale is not sold under IC 6-1.1-24-6.1; is 120 days after the date the county executive acquires the lien under IC 6-1.1-24-6.
- Under new subsection IC 6-1.1-25-4(l), if a tract or item of real property did not sell at a tax sale and the county treasurer and the owner of real property agree before the expiration of the period for redemption under IC 6-1.1-25-4(b) to a mutually satisfactory arrangement for the payment of the entire amount required for redemption under IC 6-1.1-25-2 before the expiration of a period for redemption extended under this subsection:
 - 1) the county treasurer may extend the period for redemption; and
 - 2) except as provided in IC 6-1.1-25-4(m), the extended period for redemption expires one year after the date of the agreement.
- Under new subsection IC 6-1.1-25-4(m), if the owner of real property fails to meet the terms of an agreement entered into with the county treasurer under IC 6-1.1-25-4(l), the county treasurer may terminate the agreement after providing 30 days written notice to the owner. If the county treasurer gives notice under this subsection, the extended period for redemption established under IC 6-1.1-25-4(l) expires 30 days after the date of the notice.



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